



October 31, 2001

Ms. Laura Garza Jimenez
County Attorney
Nueces County
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2001-4988

Dear Ms. Jimenez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154239.

The Nueces County Sheriff's Office (the "sheriff") received a request for "access to the following information: The brand, Model Number and serial number of the video cassette recorder in the internal affairs office used to view the surveillance video tape of inmate Bobby Stuart, on or before Aug. 19, 1999, when the tape was accidentally erased." You initially assert that the request for "access" to the above-described information is not a request for information as that term is defined by the Public Information Act (the "Act"), and therefore, the sheriff need not respond to the request. Alternatively, you claim that if the information is subject to the Act, the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered arguments and reviewed the submitted information.

We first address whether or not the request constitutes a request for public information under the Act. Section 552.002 of the Government Code states:

(a) In this chapter, "public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

(b) The media on which public information is recorded include:

- (1) paper;
- (2) film;
- (3) a magnetic, optical, or solid state device that can store an electronic signal;
- (4) tape;
- (5) Mylar;
- (6) linen;
- (7) silk; and
- (8) vellum.

(c) The general forms in which the media containing public information exist include a book, paper, letter, document, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map, and drawing and a voice, data, or video representation held in computer memory.

Additionally, this office generally holds that tangible items are not "information" within the Act. However, in this case, we note that the requestor's request letter states in part that "[d]isclosure of this information is in the public interest because *providing a copy of the information* primarily benefits the general public." (Emphasis added). Therefore, it appears that the requestor is seeking access to the information *pertaining* to the cassette recorder, and not to the recorder itself. Thus, we do not agree that the request can only be effectuated by granting the requestor physical access to the recorder. A governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 561 at 8-9 (1990), 87 (1975). We believe a good faith reading of the statute in this case compels the conclusion that the requested information is subject to the Act, and that the sheriff must provide the requestor documentation showing the brand, model number and serial number of the video cassette recorder at issue unless it does not exist or is excepted from disclosure under one of the Act's exceptions.¹

¹In this regard, we note that the affidavit submitted to this office by Chief Deputy Sheriff Jimmy Rodriguez refers to the operating instructions for the video cassette recorder at issue. We presume that such an operating manual would contain the information requested.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office a copy of the requested information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Compelling reasons exist when the information is made confidential by law or affects the interest of a third party. Open Records Decision No. 630 at 3 (1994). You argue that the requested information is excepted from disclosure under section 552.108. Section 552.108 is a permissive exception designed to protect a governmental body's interests, and does not constitute a compelling reason to overcome the presumption of openness. Accordingly, you must release the requested information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 154239

Enc. Submitted documents

c: Mr. Guy Lawrence
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(w/o enclosures)